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FILED
Court
District Court

001 21 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

RICARDO R. REYES, SET A. ALCARAZ) CIVIL ACTION NO. 04- 0004
and ESTINILIE C. ALCARAZ)

Plaintiff)

v.)

NEW SAIPAN DEVELOPMENT, INC.,) **DEFENDANTS' PROPOSED JURY**
CHEONG PUI NG and KEVIN) **INSTRUCTIONS**
INTERNATIONAL CORPORATION)

Defendant)

Defendants submit their proposed jury instructions. Defendants reserve the
right to amend these jury instructions at any time prior to reading of the
instructions to the jury.

Dated this 21st day of October, 2005.

Law Office of G. Anthony Long

By: _____

G. Anthony Long

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JURY INSTRUCTION NO. _____

DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence [and the arguments of the attorneys], it is my duty to instruct you on the law which applies to this case. [A copy of these instructions will be available in the jury room for you to consult if you find it necessary.]

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

JURY INSTRUCTION NO. _____

USE OF NOTES

You may use notes taken during trial to assist your memory. Notes, however, should not be substituted for your memory, and you should not be overly influenced by the notes.

JURY INSTRUCTION NO. _____

WHAT IS EVIDENCE

The evidence from which you are to decide what the facts are consists of:

1. the sworn testimony of witnesses, on both direct and cross-examination, regardless of who called the witness;
2. the exhibits which have been received into evidence; and
3. any facts to which all the lawyers have agreed or stipulated.

JURY INSTRUCTION NO. _____

**JURY TO BE GUIDED BY
OFFICIAL ENGLISH
TRANSLATION/INTERPRETATION**

Languages other than English have been used during this trial.

The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know the non-English language used, it is important that all jurors consider the *same* evidence. Therefore, you must base your decision on the evidence presented in the English [interpretation] [translation]. You must disregard any different meaning of the non-English words.

JURY INSTRUCTION NO. _____

WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. [In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.]
4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY INSTRUCTION NO. _____

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

JURY INSTRUCTION NO. _____

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

JURY INSTRUCTION NO. _____

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries that have not been received in evidence have been shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

JURY INSTRUCTION NO. _____

CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries have been received into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

JURY INSTRUCTION NO. _____

TWO OR MORE PARTIES—DIFFERENT LEGAL RIGHTS

You should decide the case as to each plaintiff separately. Unless otherwise stated, the instructions apply to all parties.

JURY INSTRUCTION NO. _____

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

JURY INSTRUCTION NO. _____

FAIR LABOR STANDARDS ACT (29 U.S.C. SEC. 216)

This case arises under the Fair Labor Standards Act, a federal law that provides for the payment of time-and-a-half overtime pay. Each plaintiff claims that the defendant did not pay him the legally required overtime pay.

Each plaintiff must prove each of the following by a preponderance of the evidence:

1. That the defendant plaintiff claims to be an employer, employed the plaintiff during the time period involved;
2. That the plaintiff's work was engaged in commerce or in the production of goods for commerce or plaintiff was employed by an enterprise that has employees engaged in commerce or production of goods for commerce and has annual gross sales of at least \$500,000; and
3. That the defendant failed to pay the plaintiff the overtime pay required by law.

The term "commerce" has a very broad meaning and includes any trade, commerce, transportation, transmission or communication between any state and any place outside that state.

A person is considered to have been "engaged in the production of goods" if the person produced, manufactured, mined, handled, transported, or in any other manner worked on such goods or worked in any closely related process or occupation directly essential to the production of the goods.

An employer must pay its employees at least one and one-half times their regular rate for overtime work.

An employee's regular rate is the basis for calculating any overtime pay due the employee.

The regular rate for a week is determined by dividing the first 40 hours worked into the total wages paid for those 40 hours. The overtime rate, then, is one and one-half times that rate.

If, after considering all of the evidence, you find that the plaintiff has failed to prove one or more of the elements of his claim, your verdict must be for the defendant.

JURY INSTRUCTION NO. _____

Even if the plaintiff has proven the elements of his claim, you must return a verdict for the defendant if the defendant proves by a preponderance of the evidence that plaintiff is exempt from the overtime pay law.

If, however, you find that the plaintiff has proved by a preponderance of the evidence all of the elements of his claim, and that the defendant has failed to establish its claim of exemption from the overtime pay law, then your verdict must be for the plaintiff and you must determine the damages that the plaintiff is entitled to recover.

The measure of damages is the difference between what the employer should have paid the employee under the law and the amount that you find the employer actually paid.

11th Cir. Civil Jury Instructions No. 11.1

JURY INSTRUCTION NO. _____

ENTERPRISE COVERAGE

To prove existence of an “enterprise” a plaintiff must show that the companies (1) perform related activities (2) under unified operations or common control and (3) a common business purpose

Martin v. Deiriggi, 985 F.2d 129, 133 (4th Cir.1992); 29 U.S.C. § 203(r).

JURY INSTRUCTION NO. _____

CORPORATIONS AND PARTNERSHIPS—FAIR TREATMENT

All persons are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any other person.

JURY INSTRUCTION NO. _____

LIABILITY OF CORPORATION—SCOPE OF AUTHORITY NOT IN ISSUE

Under the law, a corporation is a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

JURY INSTRUCTION NO. _____

DAMAGES—PROOF

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find for a plaintiff, you must determine plaintiff's damages. Plaintiff has the burden of proving damages by a preponderance of the evidence. Damages means the amount of money which will reasonably and fairly compensate the plaintiff for any injury you find was caused by the defendant.

The plaintiff has the burden of proving damages by a preponderance of the evidence, and it is for you to determine what damages, if any, have been proved.

Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

JURY INSTRUCTION NO. _____

MEASURES OF TYPES OF DAMAGES

The measure of damages is the difference between what the employee should have been paid under the Fair Labor Standards Act and the amount that you determine that he was actually paid.

In the event that you are convinced by the evidence that the defendant did violate the Fair Labor Standards Act, then you must determine the amount of damages the plaintiff has suffered. That difference is the amount of damages.

In considering the issue of the plaintiff's damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just, and reasonable compensation for the plaintiff's damages – no more, and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. Damages also do not include sums for court costs or attorney fees. Neither can damages be based on speculation or guesswork because only actual damages – what the law calls compensatory damages – can be recovered.

ABA MODEL JURY INSTRUCTIONS § 7.04

JURY INSTRUCTION NO. _____

DUTY TO DELIBERATE

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully and with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

JURY INSTRUCTION NO. _____

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal [or bailiff], signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

JURY INSTRUCTION NO. _____

RETURN OF VERDICT

After you have reached unanimous agreement on a verdict, your foreperson will fill in, date, and sign the verdict form or forms and advise the court that you have reached a verdict.